

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 904 OF 2007

IN

CRIMINAL APPEAL NO. 661 OF 2007

Prashant Ashok Tupe ...Applicant
V/s.
The State of Maharashtra ...Respondent

Shri A.P. Mundargi, Sr.Counsel i/b. Shri Niranjan
Mundargi for the Applicant.
Mrs.M.M. Deshmukh, APP for the State.

CORAM : V.M. KANADE, J.

DATED : OCTOBER 19, 2007

P.C. :-

. Heard the learned Counsel for the applicant and
the learned APP for the State.

2. The applicant is convicted by the trial Court
for an offence punishable under Section 304 Part II of
IPC and sentenced to suffer Rigorous Imprisonment for 7
years and to pay a fine of Rs.50,000/- and in default,
to undergo further RI for one year.

3. Prosecution case is that on 23.2.2004 at about
10.30 pm., the complainant and his friends were
chitchatting on the Malwadi-Mundhwa Road near Chovisa

Vasti and at that time, they heard shouts from the side of the house of the father of the accused and therefore, the complainant and his friends ran to the said place and the deceased Amol was with them. It is alleged that when Amol was standing near the Tulsi Vrindavan in front of the house, the accused, son of Ashok Tupe brought one gun from his house and fired the bullet on Amol Tupe who fell on the ground. Relatives and the people in the neighbourhood gathered at the spot. Amol was carried to the hospital where he was declared dead on examination. An offence punishable under Section 302 was registered against the accused. Charge-sheet was filed. The trial Court examined 12 witnesses. The trial Court after having appreciated evidence on record, came to the conclusion that the incident, in question, had taken place after ladies raised shouts and that the accused were under impression that some people were committing dacoity in their property and therefore, a shot was fired by the accused in which Amol was hit by the bullet fired from double barrel gun and succumbed to the injuries. The prosecution has examined 9 witnesses and in their statements they had stated that they first

heard shot being fired and they heard the shouts of ladies and therefore, they rushed to the spot and thereafter, the accused had fired a shot on deceased Amol. However, in the cross-examination, the defence has been in the position to bring on record the contradiction in their statements that this was not story as told by them to the police. Further suggestion has been made in the cross-examination of these eye witnesses. Suggestion is that there used to be dacoity and there was some incidents of the dacoity had taken place at the house and therefore, father of the accused who was a police patil had purchased a gun to protect his life and property and after few ladies raised shouts, the accused was under the impression that again similar type of dacoity was taking place, therefore, he shot from his firearm, as a result of which deceased Amol died. The trial Court accepted this defence and gave the benefit of doubt to the accused and acquitted him for the offence punishable under Section 302, however, convicted him under Section 304 Part II. The trial Court also accepted the fact that since the blood was found on the shirt of the accused probablises the

case of the accused that immediately thereafter the accused had taken the deceased in his own car to the hospital.

4. The applicant was on bail during the trial. In my view, prima facie case is made out for grant of bail. There was no prior incident as far as the applicant is concerned who is 29 years of age. The applicant was also released on bail by this Court during the pendency of the trial by order dated 27th July, 2004 in Criminal Application No.2963/2004.

5. Under the circumstances, the applicant be released on bail in the sum of Rs.25,000/- with one or two sureties in the like amount. The applicant shall report to Hadapsar Police Station once in a month.

. Application is disposed of.

(V.M. KANADE, J.)